

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

47 SPY GLASS HILL CORP.,

Debtor.

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47 SPY GLASS HILL CORP.,

Plaintiff,

v.

UNITED STATES TRUSTEE,

Defendant.

No. 23-CV-6807 (KMK)

ORDER OF DISMISSAL

KENNETH M. KARAS, United States District Judge:

On August 3, 2023, Debtor/Plaintiff 47 Spy Glass Hill Corp. (“Debtor”), proceeding pro se, filed a Motion for Withdrawal of Reference pursuant to 28 U.S.C. § 157(d) requesting that this Court hear its Chapter 11 case pending in the Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”). (*See generally* Not. of Mot. (Dkt. No. 1).) Debtor instituted the underlying bankruptcy proceeding, No. 23-35284, on April 12, 2023. (*Id.* at 1.) On May 5, 2023, the United States Trustee filed a Motion To Dismiss or Convert the case, arguing that “Debtor is a fictitious person that may not appear in federal court pro se.” (Trustee’s Mem. of Law in Supp. of Mot. To Dismiss or Convert (Dkt. No. 7-1, 23-35284 Dkt.).) Debtor did not object to that motion, and the Bankruptcy Court dismissed the case on August 9, 2023. (Order Granting Mot. To Dismiss (Dkt. No. 20, 23-35284 Dkt.).) The next day, on

August 10, 2023, the Bankruptcy Court terminated Debtor's Motion for Withdrawal of Reference as moot. (Dkt. No. 21, 23-35284 Dkt.).)

Under § 157(d), a "district court may withdraw, in whole or in part, any case or proceeding referred under this section . . . for cause shown." "[A] bankruptcy court order dismissing an adversary proceeding[, however,] moots a motion to withdraw reference pursuant to § 157(d)." *In re Lear Corp.*, 418 B.R. 47, 48 (S.D.N.Y. 2009); *see also Revere Copper and Brass, Inc. v. Acushnet Co.*, 172 B.R. 192, 195 (S.D.N.Y. 1994) ("[P]laintiffs are obviously correct that an affirmative decision on the dismissal motion pending in the Bankruptcy Court would moot the § 157(d) motion presently here."); *In re Garden Fresh Restaurants, LLC*, No. 21-CV-1440, 2022 WL 410942, at *1 (S.D. Cal. Feb. 10, 2022) (dismissing motion for withdrawal as moot where the bankruptcy court dismissed the underlying adversary proceeding while the motion was pending); *In re Eze*, No. 17-CV-11054, 2017 WL 4212338, at *2 (D. Mass. July 6, 2017) (same). Put differently, once the underlying proceeding is dismissed, "there remains no matter" for Debtor to withdraw. *See In re Eze*, 2017 WL 4212338, at *2.

Accordingly, Debtor's Motion for Withdrawal of Reference is dismissed as moot. The Clerk of Court is directed to mail a copy of this Order to Debtor.

SO ORDERED.

Dated: September 11, 2023
White Plains, New York

A handwritten signature in black ink, appearing to read 'K. Karas', written over a horizontal line.

KENNETH M. KARAS
United States District Judge